

STATE OF MICHIGAN
COURT OF APPEALS

In re SARAH HANDELSMAN TRUST.

LOWELL SCHULTZ,

Petitioner-Appellant,

v

FRANCES GOLDMAN and COMERICA BANK,

Respondents-Appellees.

UNPUBLISHED

October 17, 2006

No. 268483

Oakland Probate Court

LC No. 1997-260650-TI

In re ZELIG HANDELSMAN TRUST.

LOWELL SCHULTZ,

Petitioner-Appellant,

v

FRANCES GOLDMAN and COMERICA BANK,

Respondents-Appellees.

No. 268484

Oakland Probate Court

LC No. 1997-260649-TI

Before: Davis, P.J., and Murphy and Schuette, JJ.

DAVIS, P.J. (*concurring*).

I concur in the result reached by the majority sustaining the trial court's ruling.

I only write separately to indicate that I believe, after considerable review of this matter, that the trial court's rationale for its ruling provides the better foundation for the ruling. In particular, the trial court concluded that the gift was only of rents until Ms. Handelsman's death because she did not convey any of the corpus of the trust. I disagree with the majority's finding of fault with the trial court's reasoning.

It is axiomatic that a gift donor can only give what he or she actually has, and the donor cannot give away “the interest of a third party.” *Fischer v Union Trust Co*, 138 Mich 612, 616-619; 101 NW 852 (1904). The record evidence indicates that at all relevant times, Ms. Handelsman’s personal interest in “the upstairs rent” was strictly as an income beneficiary of her trust, which was in turn partially an income beneficiary of the Zelig Handelsman Trust.

As the trial court found, there is no indication of record that Ms. Handelsman took any action in her capacity as a trustee to assign any portion of the corpus of the trust to appellant. Ms. Handelsman’s status as an income beneficiary of her trust terminated with her death, so any gift dependant on that entitlement could not have extended beyond her death. Therefore, presuming she made an unqualified gift to petitioner of her right to receive “the upstairs rent,” that gift terminated with her death.

I would affirm both the trial court’s result and the trial court’s reasoning.

/s/ Alton T. Davis